

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>JAMES MCELROY,</b>	<b>:</b>	<b>Civil Action No. 09-5475 (TMG)</b>
<b>Plaintiff</b>	<b>:</b>	
	<b>:</b>	<b>JURY TRIAL DEMANDED</b>
<b>v.</b>	<b>:</b>	
	<b>:</b>	
<b>FIVE STAR INTERNATIONAL, LLC.,</b>	<b>:</b>	
<b>JOHN A. SCHELER,</b>	<b>:</b>	

**DEFENDANTS' SUMMARY OF FACTS, THEORIES  
OF LIABILITY AND DAMAGES**

**I. SUMMARY OF FACTS:**

Five Star International, LLC. sells new and pre-owned trucks at several locations and maintains a full service, repair, parts and maintenance department for its customers. At the beginning of July 2006, Plaintiff James McElroy was hired by Five Star International, LLC. to work as a pre-owned truck salesperson at Five Star's Mt. Joy location. Mr. McElroy's direct supervisor was John Scheler.

On or about November 15, 2010, Mr. McElroy rushed into the office of Mr. Scheler's administrative assistant Vickie Bell and, after closing her office door, began to vociferously complain about a commission he was paid, albeit one pay check later than he thought and made a number of offensive comments about the company, in general, and Mr. Scheler, specifically. Then, on November 19, 2010, a visibly shaken Ms. Bell, despite being told not to tell anyone by Mr. McElroy, told Mr. Scheler about the encounter. Specifically, she told Mr. Scheler that Mr. McElroy had frightened her and that she felt threatened by his actions. She also feared what Mr. McElroy would do to her if he found out that she had reported the incident to Mr. Scheler. She told him that Mr. McElroy was raising his voice and appeared very agitated. Ms. Bell further told Mr. Scheler that Mr. McElroy angrily attacked Mr. Scheler on a personal level and Five Star's ethics, credibility and management.

After his meeting with Ms. Bell, Mr. Scheler contacted his brother Fred Scheler and his father Pete Scheler, the other managing members of Five Star and his direct reports, and discussed the situation involving Mr. McElroy and the concerns raised by Ms. Bell. During this conversation, the Schelers also discussed the fact that a second employee, Heather Buda, also complained of being intimidated by Mr. McElroy. At the conclusion of their conversation, the Schelers decided that because of Mr. McElroy's conduct and his expressed attitude toward Mr. John Scheler and the company, that he was no longer a good fit with the company and should be fired.

Plaintiff, Mr. McElroy, now claims that he was fired because he threatened to report the Company to the Department of Labor. Defendants deny this and maintain that Mr. McElroy's firing had nothing to do with any such threats.

**II. LIABILITY:**

Defendants contend Plaintiff was fired for legitimate business reasons, rather than for threatening to file a claim with the Department of Labor. In fact, at no relevant time did Defendants believe that he had filed such a claim and McElroy himself denies ever filing a claim.

**III. DAMAGES:**

Defendants submit that Plaintiff is not entitled to damages. Beyond this, in the event that the jury finds for Plaintiff, Defendants contend that Plaintiff had indicated that he was contemplating retirement even prior to his termination and therefore would not have continued working. Finally, Defendants contend that Plaintiff has failed mitigate his damages by not making reasonable efforts to obtain available similar employment.

Respectfully submitted,

HENDRZAK & LLOYD

/s/ William E. Dengler

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